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11 **UNITED STATES DISTRICT COURT**  
12 **DISTRICT OF ARIZONA**

13 **DONALD AND NATALIE) Case No.:**  
14 **McCUTCHEN, )**  
15 **Plaintiff, ) COMPLAINT --**  
16 **vs. ) VIOLATION OF THE MAGNUSON-**  
17 **EVERGREEN RECREATIONAL ) MOSS WARRANTY ACT, BREACH**  
18 **VEHICLES LLC AND LA MESA R.V. ) OF IMPLIED WARRANTIES AND**  
19 **CENTER INC. (YUMA) ) REVOCATION OF ACCEPTANCE**  
20 **Defendants. )**

21 1. The District Court has jurisdiction to hear this matter under 28 U.S.C.  
22 §1331 as there is a federal question pursuant to the Magnuson-Moss Warranty Act, 15  
23 U.S.C. §2301 *et seq.* Jurisdiction is also conferred through 15 U.S.C. §2310(d) as the  
24 amount in controversy exceeds \$50,000.00. The Court has pendent jurisdiction over  
25 Plaintiffs' State law claims.

26 2. Plaintiffs, Donald and Natalie McCutchen ("Plaintiffs"), are consumers  
27 who reside in the State of Arizona.

1           3.       Codefendant, Evergreen Recreational Vehicles, LLC (“Evergreen” or  
2       “Warrantor”), is a foreign corporation and is engaged in the manufacture, assembly,  
3       integration, sale, supply and distribution of fully integrated travel trailers and attendant  
4       warranties. Warrantor supplies its products and services to the Arizona consuming public  
5       through its authorized dealerships and repair agents, including Codefendant, La Mesa  
6       R.V. Center, Inc. (Yuma) (“La Mesa RV” or “Seller”).  
7  
8

9           4.       On October 12, 2013, Plaintiffs purchased from La Mesa RV a 2014  
10       Evergreen Bay Hill 5th Wheel VIN # 5ZWFBTE29E1001277 (“Bayhill” or “Trailer”)  
11       manufactured, warranted and supplied by Evergreen, for a total price of \$72,993.11 plus  
12       accruing finance charges.  
13

14           5.       In connection with Plaintiffs’ purchase of the Bayhill, Evergreen issued and  
15       supplied to Plaintiffs its written warranty against defects. Evergreen was required as an  
16       essential purpose of its warranty and by common law and statute to perform adequate and  
17       competent repairs or replacements within a reasonable opportunity and time.  
18  
19

20           6.       The Bayhill has exhibited several non-conforming conditions and defects  
21       since Plaintiffs’ purchase of the same.  
22

23           7.       These defects and conditions include: slide out (6 repair attempts), fender  
24       (4 repair attempts), shower door handle (3 repair attempts), refrigerator (3 repair  
25       attempts), black tank (3 repair attempts), grey tank valve (2 repair attempts)), door panel  
26       (2 repair attempts), ceiling light (2 repair attempts), water temperature (2 repair attempts),  
27       gray tank (2 repair attempts), screen door (2 repair attempts), cabinet, battery, sliding  
28

1 door latch, DVD player, kitchen faucet, microwave turntable, TV, drivers side decorative  
2 pieces, water heater door, hydraulic reservoir, A/C, slide room fascia, sink, d-seals, range  
3 cover, driver's side slide corner cover, slide-outs, and underbelly.  
4

5 8. Despite being sold as a new product, the Bayhill has been out of service  
6 well over eight (8) months (240+ days) in less than 2 years of ownership.  
7

8 9. These defects and repair attempts prevented Plaintiffs from using the  
9 Bayhill as intended by the parties at the time of purchase and as intended by the warranty.  
10

11 10. The Bayhill's numerous defects and its repeated repairs constitute  
12 substantial impairment in the use, value and safety of the subject trailer to Plaintiffs.  
13

14 11. The Bayhill remains in a non-conforming defective condition.  
15

16 12. Plaintiffs provided Evergreen and its designated and authorized repair  
17 agent, La Mesa RV, notice of the defects, non-conformities and conditions within the  
18 Bayhill and a reasonable opportunity to make repairs.  
19

20 13. Despite being given more than a reasonable number of attempts and  
21 reasonable opportunity to cure said defects, non-conformities and conditions, Evergreen  
22 and La Mesa failed to do so. As such, the Bayhill's warranty has failed its essential  
23 purpose.  
24

25 14. Evergreen's failure to correct said defects violates Evergreen's statutory  
26 and common law duties to Plaintiffs and the expectations created by Evergreen's  
27 promotional documents and warranties.  
28

15. Throughout the warranty period, Plaintiffs kept Evergreen and La Mesa  
informed as to the defects and repair needs of the Bayhill. As evidenced by the Bayhill's

1 repair records and extensive time at La Mesa's repair facilities, Defendants were  
2 provided with opportunity to cure the noticed defects; yet the Bayhill remained defective  
3 and non-conforming. On December 18, 2014, after the unit had been months out of  
4 service pursuant to the latest ineffective repair visit, Plaintiffs (by and through  
5 undersigned) provided Evergreen additional written notification of the defects within the  
6 subject Trailer and Plaintiffs' lawful claims. The parties could not reach a resolution  
7 thereby forcing Plaintiffs to undertake the present action against Evergreen.  
8

9  
10 16. On December 18, 2014, Plaintiffs similarly informed Le Mesa of the non-  
11 conforming condition of the Bayhill and Plaintiffs' revocation of its acceptance.  
12

13 17. La Mesa refused Plaintiffs' revocation thereby forcing this enforcement  
14 action.  
15

16 18. Plaintiffs have been and will continue to be financially damaged due to  
17 Evergreen's and La Mesa's failure to conform the Bayhill to its warranty. Plaintiffs did  
18 not receive the basis of their bargain for a new Bayhill, but instead were saddled with a  
19 Bayhill riddled with defects akin to an improperly maintained several years old used  
20 trailer of a much lower value.  
21

22 19. Plaintiffs demand a trial by jury.  
23

24 **COUNT I—BREACH OF WRITTEN WARRANTY**  
25 **PURSUANT TO THE MAGNUSON-MOSS WARRANTY ACT**  
26 **CODEFENDANT EVERGREEN**

27 20. Plaintiffs re-allege and incorporate by reference the preceding paragraphs in  
28 this Complaint.

23. Plaintiffs have been damaged by Evergreen's warranty breach.

a. Enter judgment against Evergreen for all actual, incidental and consequential damages to which Plaintiffs are entitled;

c. Grant all other relief deemed just and appropriate.

24. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this Complaint.

26. Plaintiffs accepted the Bayhill on the reasonable assumption that any nonconformities within the Trailer would be seasonably cured.

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30. Plaintiffs have notified La Mesa RV of the revocation.

- a. Accept Plaintiffs' revocation of acceptance and return all monies paid towards the subject Trailer;
- b. Award all incidental and consequential damages to which Plaintiffs are entitled;
- c. Pay all reasonable court costs and attorneys' fees pursuant to A.R.S. §12-341 and A.R.S. §12-341.01; and,
- d. Provide any other relief deemed just and appropriate.

31. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this Complaint.

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1 such supplier enters into a service contract with the consumer which applies to such  
2 consumer product. *See* 15 U.S.C. §2308 (a).

3  
4 33. Las Mesa RV entered into a service contract with Plaintiffs at the time of  
5 sale which applies to the Bayhill. As such, any attempts by La Mesa RV to disclaim the  
6 implied warranty of merchantability are invalid. *See* 15 U.S.C. §2308(c) (“A disclaimer,  
7 modification, or limitation made in violation of this section shall be ineffective for  
8 purposes of this chapter and State law”).

9  
10 34. Because of its defects and repair history the Bayhill was not fit for its  
11 ordinary purpose.

12  
13 35. La Mesa RV has breached the implied warranty of merchantability to  
14 Plaintiffs.

15 WHEREFORE, Plaintiffs request that the Court:

- 16  
17 a. Enter judgment against La Mesa RV for all actual, incidental and  
18 consequential damages to which Plaintiffs are entitled;  
19  
20 b. Grant Plaintiffs all reasonable attorneys’ fees, litigation costs and  
21 expenses pursuant to 15 U.S.C. §2310 (d)(2); and,  
22  
23 c. Grant all other relief deemed just and appropriate.

24 **COUNT IV**  
25 **BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR**  
26 **PURPOSE UNDER THE MAGNUSON-MOSS WARRANTY ACT**

27 36. Plaintiffs re-allege and incorporate by reference the preceding paragraphs  
28 of this Complaint.

